

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0070P

**Individual Income Tax
For the Calendar Year 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. **Tax Administration**— Penalty

Authority: IC 6-8.1-10-2.1(d); IC 6-8.10-5; 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer's representative, in a letter dated January 6, 2000, protested the late payment penalty assessed and states it exercised due diligence in filing an extension until the audit outcome was determined so that the return would be prepared accurately without amendment. Taxpayer further states that if the penalty assessment is allowed to stand, the taxpayer will, in effect, be penalized for this diligence because a timely filed return based on the best information available at the original due date would not have generated a penalty assessment. In fact, a subsequent amendment of the return would not have generated a penalty assessment either. Further, taxpayer acted in good faith by filing and paying the tax as soon as reasonably possible after becoming aware of the impact of the audit adjustments in early June 1999. Taxpayer requests an abatement of penalty due to the above unusual circumstances.

I. **Tax Administration**— Penalty

DISCUSSION

Taxpayer requests the penalty be abated because it has established reasonable cause. Taxpayer states that if it had filed its return utilizing its previous accounting method, a refund of significant amount would have resulted. Further, it seems reasonable that the taxpayer should not be put in the position of “guessing” the outcome of an IRS audit in order to properly file its tax return. Moreover, the audit adjustments did not result from omission of income, but rather from “timing” differences in income recognition.

The issue, however, is the late payment of income tax.

Taxpayer has not shown reasonable cause.

FINDING

Taxpayer’s protest is denied.